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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,392	03/08/2004	Mathieu Audet	1079998	1894
28735 7590 06/27/2007 OSLER, HOSKIN & HARCOURT LLP (BRP) 2100 - 1000 DE LA GAUCHETIERE ST. WEST MONTREAL, H3B4W5 CANADA			EXAMINER BROWN, DREW J	
			ART UNIT 3616	PAPER NUMBER
			MAIL DATE 06/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,392

Applicant(s)

AUDET, MATHIEU

Examiner

Drew J. Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/16/07 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 17-20 is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/16/07 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7, 8, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tweet (U.S. Pub. No. 2004/0031640 A1) in view of Hanagan (U.S. Pat. No. 4,953,911).

Tweet discloses a straddle-type vehicle (100) comprising a frame (Figure 1), two wheels in the front (106) defining a front axis, two wheels in the rear (108) defining a rear axis, wherein the wheel base is defined by the front and rear axis is between 55 and 78 inches (paragraph 31). An engine (120) is disposed on the frame for driving at least one of the wheels, handlebars (110) are disposed on the frame for steering at least one of the wheels, a straddle driver seat (112) is disposed on the frame, a straddle passenger seat (114) and a backrest (122) are disposed on the frame rearward of the driver seat, and a cargo rack is disposed rearward of the passenger seat (Figure 4).

Tweet also discloses that each of the wheels includes a low-pressure balloon tire (paragraph 22) but does not disclose that the air pressure is between 1.5 and 4 psi. However, it would have been obvious to one having ordinary skill in the art at the time the invention was

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made to make the pressure between 1.5 and 4 psi in order to provide proper traction on different terrains.

Tweet discloses the claimed invention as discussed above but does not disclose that the passenger seat is transformable between a first configuration to accept a passenger and a second configuration to accept cargo, where the backrest is substantially level with the cargo rack when the backrest is in the second configuration.

Hanagan, however, does disclose a passenger seat (20) that is transformable between a first substantially upright configuration to accept a passenger (Figure 4) and a second substantially horizontal configuration to accept cargo (Figure 1). The backrest is pivotal with respect to the seat portion (Figure 6), and the backrest is substantially level with the cargo rack when the backrest is in the second configuration. A contour of the seat portion and a contour of the backrest of the passenger seat are configured to provide back support for the driver seat when the passenger seat is in the first (Figures 2 and 4) and second (Figures 1 and 2) configuration, respectively. Hanagan also discloses a locking mechanism (60) constructed and arranged to lock the backrest into a desired orientation.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Tweet in view of the teachings of Hanagan to have a transformable seat so that a variety of sizes and shapes of cargo can be secured to the cargo rack behind the rear seat of the ATV when a passenger is not occupying the seat.

With respect to claim 18, the recitation that the passenger seat is "removable" from the vehicle does not serve to distinguish because it is narrative in form. The recitation is not supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. Further, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. Accordingly, the passenger seat is "removable" from the vehicle.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tweet in view of Hanagan, and further in view of McNichol, Jr. et al. (U.S. Pat. No. 3,873,127).

The combination of Tweet and Hanagan discloses the claimed invention as discussed above but does not disclose that an auxiliary rack is mounted to a rear of the backrest such that

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the auxiliary rack is substantially level with the cargo rack when the backrest is in the horizontal orientation.

McNichol, Jr. et al., however, discloses an auxiliary rack (10) mounted to a backrest (94). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the invention of Tweet in view of the teachings on McNichol, Jr. et al. to have an auxiliary rack mounted to the rear of the backrest so that when the backrest is in the horizontal position, additional storage space is available to transport more cargo without damaging the backrest.

Allowable Subject Matter

5. Claims 11 and 17-20 are allowed.
6. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed on 4/16/07 have been fully considered but they are not persuasive.

On page 7 Applicant argues that the combination of Tweet and Hanagan fails to disclose that the backrest is substantially level with the cargo rack when the backrest is in the second configuration. However, the Examiner maintains that the rejection is proper because when the backrest of Hanagan is in the horizontal position, it is "substantially" level with the cargo rack of Tweet. It is apparent that the seats of Tweet and Hanagan are of similar size, so the modification would not cause the seat to extend well above the cargo rack. Also, the Examiner notes that even if the backrest is not flush with the cargo rack, larger cargo would still extend across the backrest and provide the same function.

Applicant also argues on page 8 that the prior art provides no indication of the relative heights of the backrest of Hanagan and the cargo rack of Tweet because they are not shown on the same vehicle. However, the Examiner notes that the backrest (22) of Hanagan is attached to and pivots from the platform (12) of the vehicle (Figure 5). When modifying the seat of Tweet

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in view of Hanagan, the backrest would also pivot from the platform of the vehicle, which is positioned substantially level with the cargo rack (Figure 5). Therefore, when the backrest is in the second configuration, regardless of the relative heights of the backrest of Hanagan and cargo rack of Tweet, the backrest would be “substantially” level with the cargo rack.

On page 9 Applicant argues that the backrest of Hanagan has an appreciable thickness, and that the backrest is higher than the passenger portion of the seat when in the second position, and also that the passenger seat of Tweet is higher than the cargo rack. However, the Examiner maintains that the rejection is proper because the claim does not recite that the backrest is flush with the cargo rack, it merely recites that it is “substantially level” with the cargo rack when in the second position. The term “substantially” is a broad term that encompasses “slightly less than” and “slightly greater than;” therefore, even if the backrest is slightly higher than the cargo rack and performs the same function equally well, meaning that cargo would still be able to overlap the back portion of the backrest when placed onto the cargo rack, they are still considered to be “substantially level.”

On page 11 Applicant argues that when the cargo rack on the second section of McNichol is configured to receive cargo, the second section is not substantially level with any structure rearward of the passenger seat. However, the prior art of McNichol is only relied upon to teach that the auxiliary rack is attached to the back of the backrest, not that the seat pivots backwards. Hanagan is relied upon to teach the pivoting of the backrest, so when the backrest pivots forwardly on top of the seat, the auxiliary frame would in fact be substantially level with the cargo rack.

Also, on pages 8 and 11 Applicant argues that neither Hanagan nor McNichol disclose a cargo rack rearward of the passenger seat. However, the Examiner notes that Hanagan and McNichol are relied upon to teach the details of the seat and the backrest, and Tweet is relied upon to teach the cargo rack being disposed rearward of the passenger seat.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew J. Brown whose telephone number is 571-272-1362. The examiner can normally be reached on Monday-Thursday from 8 a.m. to 4 p.m..

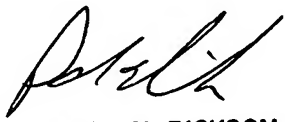
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Drew J. Brown
Examiner
Art Unit 3616

db
6/5/07

 6/18/07
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